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EXAMINER

DOUYON, LORNA M

ART UNIT	PAPER NUMBER
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1796

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/525,982

Applicant(s)

BURT ET AL.

Examiner

Lorna M. Douyon

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 7-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 7-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

1. This action is responsive to the amendment filed on October 1, 2007.
2. Claims 1-5, 7-21 are pending. Claim 21 is newly added.
3. The objection to the disclosure is withdrawn in view of Applicants' amendment.
4. The rejection of claims 11 and 12 under 35 U.S.C. 112, second paragraph is withdrawn in view of Applicants' amendment.
5. The rejection of claims 1-6, 16-18 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 5 of U.S. Patent No. 7,189,686 paragraph is withdrawn in view of Applicants' amendment.
6. The rejection of claims 1, 3-6, 15-18 under 35 U.S.C. 102(b) as being anticipated by Dickler et al. (US Patent No. 6,037,319) is withdrawn in view of Applicants' amendment.
7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. Claims 1, 3-5, 7-8, 13-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over DeNome et al (US 2002/0142931), hereinafter "DeNome '931".

DeNome '931 teaches an automatic dishwashing composition in the form of an anhydrous, shear-thinning organo-solvent-based gel (see abstract), and in unitized form for example pouches, sachets, etc. which are particularly useful for cleaning heavily soiled dishwashing loads and for the removal of cooked-, baked- and burnt-on soils (see paragraph 0001 on page 1). The composition contains less than about 5%, preferably less than about 1% free moisture (see paragraph 0012 on page 2), and from about 10% to about 90% of solvent by weight of the composition (see paragraph 0027 on page 4). Suitable solvents include alcohols (aliphatic C₄-C₁₀), alkanolamines, glycol ethers and mixtures thereof; and suitable glycol ethers include ethylene glycol monomethyl ether and propylene glycol monobutyl ether (see paragraph 0045 on page 5). The composition also comprises surfactants like anionic surfactants such as alkyl sulfates and alkyl ether sulfates, nonionic alkoxylated surfactants such as ethoxylated-propoxylated alcohols, cationic surfactants, amphoteric surfactants and mixtures thereof (see paragraph 0048 on pages 5-6). Preferred unitized dose forms are water soluble pouches or sachets which can be made in known manner, for example, blow-, injection- or rotary moulding, and polyvinyl alcohols are preferred polymers for use as pouches (see paragraphs 0069 and 0072 on page 7). DeNome '931 also teaches a method of washing cookware/tableware in an automatic dishwashing machine using the above composition (see paragraphs [0039], [0084], [0088], [0090], which is understood to meet the steps of claim 15. DeNome '931, however, fails to specifically disclose at

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least 70 wt% of the solvent, the combination of propylene glycol monobutyl ether with propylene glycol methyl ether, the water soluble container being adapted to form a hard surface cleaning composition via dissolution of the water soluble container and its contents in a container containing an amount of water, and the flash point of the composition.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to select the portion of the prior art's range (i.e., 70 to about 90 wt% solvent) which is within the range of applicant's claims because it has been held to be obvious to select a value in a known range by optimization for the best results. As to optimization results, a patent will not be granted based upon the optimization of result effective variables when the optimization is obtained through routine experimentation unless there is a showing of unexpected results which properly rebuts the prima facie case of obviousness. See *In re Boesch*, 627 F.2d 272,276,205 USPQ 215,219 (CCPA 1980). See also *In re Woodruff* 919 F.2d 1575, 1578,16 USPQ2d 1934, 1936-37 (Fed. Cir. 1990), and *In re Aller*, 220 F.2d 454,456,105 USPQ 233,235 (CCPA 1955).

With respect to propylene glycol methyl ether glycol, DeNome '931 teaches glycol ethers in paragraph 0045 on page 5, one of which is ethylene glycol monomethyl ether. Even though DeNome '931 does not explicitly disclose propylene glycol monomethyl ether, it would have been obvious to one ordinary skill in the art to have substituted the ethylene glycol monomethyl ether with its homologues like propylene glycol monomethyl ether because characteristics normally possessed by members of homologous series are principally the same, and vary but gradually from member to

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member; chemists knowing properties of one member of series would in general know what to expect in adjacent member, see *In re Henze*, 85 USPQ 261.

With respect to the limitation "the water soluble container being adapted to form a hard surface cleaning composition via dissolution of the water soluble container and its contents in a container containing an amount of water", it has been held that the recitation that an element is "adapted to" perform or is "capable of" performing a function is not a positive limitation but only requires the ability to so perform. The recitation of a new intended use for an old product does not make a claim to that old product patentable, see *In re Schreiber*, 44 USPQ2d 1429 (Fed. Cir.1997).

With respect to the flash point of the composition, it would have been obvious to one ordinary skill in the art at the time the invention was made to reasonably expect the composition of DeNome '931 to have a flash point within those recited because similar ingredients with overlapping proportions have been utilized.

9. Claims 9-12, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over DeNome '931 as applied to the above claims, and further in view of Bettiol et al. (US Patent No. 5,958,858), hereinafter "Bettiol".

DeNome '931 teaches the features as described above. DeNome, however, fails to disclose alkylpolyglycoside surfactant and alkoxylated quaternary ammonium surfactant.

It is known from Bettiol to incorporate alkylpolyglycoside nonionic surfactants (see col. 11, line 50+) and alkoxylated quaternary ammonium surfactant compounds

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(see col. 13, lines 34-38) into a similar liquid dishwashing composition (see col. 43, lines 49-50).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate alkylpolyglycoside surfactant and alkoxylated quaternary ammonium surfactant into the composition of DeNome '931 because DeNome '931 specifically desires nonionic and cationic surfactants into his composition and Bettiol teaches such suitable surfactants in an analogous art.

10. Claims 1-5, 7-8, 15-18 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Denome et al. (US 2004/0063601), hereinafter "Denome '601".

Denome '601 teaches a dosable liquid gel anhydrous organic solvent composition, suitable for dishwashing, which comprises sodium tripolyphosphate hexahydrate and water-soluble dyes (see paragraph [0002] and [0010] on page 1). The anhydrous organic solvent composition comprises an organic solvent composition (wherein "solvent composition" is understood to comprise the organic solvent system and optional additional active ingredients and diluents) and one or more automatic dishwashing detergent compositions (see paragraph [0038] on pages 3-4). The organic solvent is present at any suitable amount, and is typically present at levels from about 10% to about 80% by weight of the total composition (see paragraph [0039] on page 4). Examples of suitable solvents include (i) alcohols; (ii) amines such as alkanolamines; (iii) esters; (iv) glycol ethers; (v) glycols; and mixtures thereof (see paragraph [0043] on

page 4). The organic solvent system is preferably selected from (i) glycol ethers such as ethylene glycol monomethyl ether, propylene glycol butyl ether, among a few; and (ii) glycols; and mixtures thereof (see paragraph [0044] on page 4). The effective amount of water, preferably deionized water, in the anhydrous organic solvent composition is determined by the amount of hydrated builder species to be generated, generally from about 5 to about 10% (see paragraphs [0058-0059] on page 5). The composition also comprises one or more detergent active components such as colorants, surfactants, alkalinity sources, hydrotropes, and other organic solvents like methanol, ethanol propanol and isopropanol (see paragraphs [0075]-[0077] on pages 6-7). The surfactants include anionic, cationic, nonionic, amphoteric, ampholytic, zwitterionic surfactants, and mixtures thereof (see paragraph [0098] on page 8). In compositions and methods for use in cleaning soiled tableware prior to dishwashing, the detergent surfactant is preferably foamable in direct application but low foaming in automatic dishwashing use (see paragraph 0098] on page 8, which automatic dishwashing use is understood to read on claim 15. Suitable surfactants include anionic surfactants like alkyl sulfates and alkyl ether sulfates and nonionic surfactants such as nonionic alkoxyated surfactants and block polyoxyethylene-polyoxypropylene polymeric compounds (see paragraph [0099] on page 8). The composition also demonstrate improved compatibility with partially hydrolysed, water-soluble PVA pouch materials of known construction and type (see paragraphs [0133]-[0134] on page 10). The composition can be dispensed from any suitable device such as a single or multi-compartment water-soluble pouch (see paragraph [0135] on pages 10-11). Denome '601, however, fails to specifically disclose

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at least 70 wt% of the solvent, the combination of propylene glycol monobutyl ether with propylene glycol methyl ether, the water soluble container being adapted to form a hard surface cleaning composition via dissolution of the water soluble container and its contents in a container containing an amount of water, and the flash point of the composition.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to select the portion of the prior art's range (i.e. 70 to about 80 wt% solvent) which is within the range of applicant's claims because it has been held to be obvious to select a value in a known range by optimization for the best results. As to optimization results, a patent will not be granted based upon the optimization of result effective variables when the optimization is obtained through routine experimentation unless there is a showing of unexpected results which properly rebuts the prima facie case of obviousness. See *In re Boesch*, 627 F.2d 272,276,205 USPQ 215,219 (CCPA 1980). See also *In re Woodruff* 919 F.2d 1575, 1578,16 USPQ2d 1934, 1936-37 (Fed. Cir. 1990), and *In re Aller*, 220 F.2d 454,456,105 USPQ 233,235 (CCPA 1955).

With respect to the limitation "the water soluble container being adapted to form a hard surface cleaning composition via dissolution of the water soluble container and its contents in a container containing an amount of water", it has been held that the recitation that an element is "adapted to" perform or is "capable of" performing a function is not a positive limitation but only requires the ability to so perform. The recitation of a new intended use for an old product does not make a claim to that old product patentable, see *In re Schreiber*, 44 USPQ2d 1429 (Fed. Cir.1997).

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With respect to propylene glycol methyl ether glycol, Denome '601 teaches glycol ethers in paragraph 0044 on page 4, one of which is ethylene glycol monomethyl ether. Even though Denome '601 does not explicitly disclose propylene glycol monomethyl ether, it would have been obvious to one ordinary skill in the art to have substituted the ethylene glycol monomethyl ether with its homologues like propylene glycol monomethyl ether because characteristics normally possessed by members of homologous series are principally the same, and vary but gradually from member to member; chemists knowing properties of one member of series would in general know what to expect in adjacent member, see *In re Henze*, 85 USPQ 261.

With respect to the flash point of the composition, it would have been obvious to one ordinary skill in the art at the time the invention was made to reasonably expect the composition of Denome '601 to have a flash point within those recited because similar ingredients with overlapping proportions have been utilized.

11. Claims 9-12, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Denome '601 as applied to the above claims, and further in view of Bettiol.

DeNome '601 teaches the features as described above. DeNome '601, however, fails to disclose alkylpolyglycoside surfactant and alkoxylated quaternary ammonium surfactant.

It is known from Bettiol to incorporate alkylpolyglycoside nonionic surfactants (see col. 11, line 50+) and alkoxylated quaternary ammonium surfactant compounds

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(see col. 13, lines 34-38) into a similar liquid dishwashing composition (see col. 43, lines 49-50).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate alkylpolyglycoside surfactant and alkoxyated quaternary ammonium surfactant into the composition of DeNome '601 because DeNome '601 specifically desires nonionic and cationic surfactants into his composition and Bettiol teaches such suitable surfactants in an analogous art.

12. Claims 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Denome '601 as applied to the above claims, and further in view of DeNome '931.

Denome '601 teaches the features as discussed above. Denome '601, however, fails to disclose a thermoformed or injection molded water soluble polymer.

DeNome '931 teaches the features as described above. In particular, DeNome '931 teaches water soluble pouches or sachets which can be made in known manner, for example, blow-, injection- or rotary moulding, and polyvinyl alcohols are preferred polymers for use as pouches (see paragraphs 0069 and 0072 on page 7).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to prepare the water-soluble PVA pouch of Denome '601 by injection moulding because Denome '601 desires water-soluble PVA pouch materials of known construction and type as disclosed in paragraph [0134], and DeNome '931 provides such water-soluble pouches prepared by known methods such as injection moulding.

13. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dickler et al. (US Patent No. 6,037,319), hereinafter "Dickler".

Dickler teaches water-soluble packets containing liquid cleaning concentrates (see abstract). The packets are formulated for a particular use; however, multipurpose cleaning packets are within the scope of the invention, and such multipurpose cleaning packets can be formulated for universal use, or for something less than universal use, such as use on non-textiles (see col. 4, lines 61-65). The cleaning concentrate packets are stable despite containing cleaning concentrates having less than 10 wt% water (see col. 3, lines 42-49; col. 4, lines 19-21). In Example 1, Dickler teaches a neutral floor cleaner comprising 75.49% dimethyl monoethyl ether (reads on component b); 8.00% sodium lauryl sulfate; 0.50% dimethyl glyoxime; 0.40% monoethanolamine; 13.61% nonyl phenoxy polyethyleneoxy ethanol and 2.00% water (see col. 5, lines 5-26), which is packaged in a water-soluble film made of polyvinyl alcohol (see col. 8, lines 47-48). Dickler, however, fails to specifically disclose a liquid cleaning concentrate which contains in excess of 7.5 wt% water, but no more than about 12.5 wt% water.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to select the portion of the prior art's range (i.e. "less than 10 wt% water, which overlaps Applicants' proportion of "in excess of 7.5 wt% to less than 10 wt% water") which is within the range of applicant's claims because it has been held to be obvious to select a value in a known range by optimization for the best results. As to optimization results, a patent will not be granted based upon the optimization of result

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effective variables when the optimization is obtained through routine experimentation unless there is a showing of unexpected results which properly rebuts the *prima facie* case of obviousness. See *In re Boesch*, 627 F.2d 272,276,205 USPQ 215,219 (CCPA 1980). See also *In re Woodruff* 919 F.2d 1575, 1578,16 USPQ2d 1934, 1936-37 (Fed. Cir. 1990), and *In re Aller*, 220 F.2d 454,456,105 USPQ 233,235 (CCPA 1955). In addition, a *prima facie* case of obviousness exists because the claimed ranges "overlap or lie inside ranges disclosed by the prior art", see *In re Wertheim*, 541 F.2d 257,191 USPQ 90 (CCPA 1976; *In re Woodruff*, 919 F.2d 1575,16USPQ2d 1934 (Fed. Cir. 1990). See MFEP 2131.03 and MPEP 2144.051.

Response to Arguments

14. Applicants' arguments filed October 1, 2007 have been fully considered but they are not persuasive.

With respect to the obviousness rejection based upon DeNome '931, Applicants argue that Applicants' composition is intended to be supplied to a bucket, bottle, such as a trigger spray bottle, or other container within which Applicants' concentrate in a sachet is intended to be dispensed by dissolution of both the concentrate and the sachet materials, unlike Denome '931 wherein the dissolution of the article is not required.

The Examiner respectfully disagrees with the above argument because as stated above, the recitation of a new intended use for an old product does not make a claim to that old product patentable, see *In re Schreiber*, 44 USPQ2d 1429 (Fed. Cir.1997). As

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above, with respect to the limitation "the water soluble container being adapted to form a hard surface cleaning composition via dissolution of the water soluble container and its contents in a container containing an amount of water", it has been held that the recitation that an element is "adapted to" perform or is "capable of" performing a function is not a positive limitation but only requires the ability to so perform. The recitation of a new intended use for an old product does not make a claim to that old product patentable, see *In re Schreiber*, 44 USPQ2d 1429 (Fed. Cir.1997).

Applicants also argue that the composition of the present invention as well as the articles taught by the present inventors substantially or wholly dissolves when the sachet containing the concentrate composition is provided to a greater quantity of water, particularly wherein room temperature water is used as the dissolving medium, and this is not readily apparent nor is necessarily suggested by DeNome '931 wherein the article is expected by a skilled artisan to be released into a heated quantity of water in the automatic dishwasher.

The Examiner respectfully disagrees with the above argument because there is nowhere required in the instant claims wherein the temperature of the water used as the dissolving medium is at room temperature.

With respect to the rejection based upon Denome '931 in view of Bettiol, Applicants incorporate by reference to prior remarks made with respect to the purported relevance of the Denome '931 reference. With respect to Bettiol, Applicants argue that the Bettiol compositions are clearly either in a liquid, solid, gel, or powdered form and in no time during their service life are they enclosed in a water-soluble or water dispersible

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film or container. Applicants also argue that there is nothing in the Bettiol reference which provides any useful teaching as to the selection of, or the utility of constituents or combinations of constituents which would be expected to be stable for a reasonable length of time when provided in the interior of a water-soluble or water dispersible film pouch or container.

The responses to DeNome '931 apply here as well. As stated above, DeNome '931 specifically desires nonionic and cationic surfactants into his composition (see paragraph 0048) which, already is packaged in a water-soluble container (see paragraphs 0069 and 0072). Bettiol, an analogous art, teaches the incorporation of alkylpolyglycoside nonionic surfactants (see col. 11, line 50+) and alkoxylated quaternary ammonium surfactant compounds (see col. 13, lines 34-38) into a similar liquid dishwashing composition (see col. 43, lines 49-50). Hence, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate alkylpolyglycoside surfactant and alkoxylated quaternary ammonium surfactant into the composition of DeNome '931 because DeNome '931 specifically desires nonionic and cationic surfactants into his composition and Bettiol teaches such suitable surfactants in an analogous art.

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Conclusion

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lorna M. Douyon whose telephone number is 571-272-1313. The examiner can normally be reached on Mondays-Fridays 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lorna M. Douyon/
Primary Examiner
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